

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

OCT 10 2000
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Revision of the Commission's Rules) CC Docket No. 94-102
 to ensure compatibility with) RM-8143
 enhanced 911 emergency calling systems)

To: The Chief, Wireless Telecommunications Bureau

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
 TO THE PETITION FOR RECONSIDERATION OF APCO**

I. INTRODUCTION

Pursuant to the September 29, 2000 Public Notice of the Federal Communications Commission ("Commission"),¹ Nextel Communications, Inc. ("Nextel") respectfully submits this Opposition to the Petition for Reconsideration of the Association of Public-Safety Communications Officials-International, Inc. ("APCO") in the above-referenced proceeding.²

To preserve consistency and certainty in carriers' and manufacturers' Enhanced 911 ("E911") Phase II implementation process, the Commission must uphold its decision, which was based on ample record evidence consistent with the waiver process outlined in the Fourth Memorandum Opinion and Order.³ Reversing its decision at this juncture, before Voicestream

¹ Public Notice, "WTB Seeks Comment on Petition for Reconsideration of Voicestream Waiver Filed By APCO," DA 00-2231, released September 29, 2000.

² Petition for Reconsideration of Voicestream Waiver, filed September 20, 2000, by APCO (hereinafter "APCO Petition").

³ Fourth Memorandum Opinion and Order, FCC 00-326, released September 8, 2000 ("Fourth MO&O") at paras. 44-45.

No. of Copies rec'd
 List ABCDE

014

has had an opportunity to begin implementation consistent with the waiver conditions is not in the public interest.

Nextel believes it is important for the Commission to provide the industry some assurance that its waiver process – outlined in the Fourth MO&O – is a legitimate avenue for carriers that find themselves unable to implement a location solution that can meet the Commission's accuracy requirements within the established time frames. Carriers must have confidence that if, despite continued (and documented) efforts and investment, no feasible, fully-compliant Phase II location solution is available, the Commission will entertain waiver requests that, like Voicestream's, provide a legitimate plan to reach full compliance. The waiver process, which is an integral part of the Commission's regulation of wireless carriers, must be preserved and implemented in a consistent, fair manner.

II. DISCUSSION

In the Fourth MO&O, the Commission stated that waivers of its rules – whether the E911 rules or any other obligation -- are granted if good cause is shown.⁴ With respect to waivers of the Commission's E911 Phase II implementation rules, it stated that a carrier may be entitled to a waiver if it submits a request that is "specific, focused and limited in scope, with a clear path to full compliance."⁵ Additionally, to justify a waiver, a carrier must come as close as possible to compliance with the rule's location accuracy and

⁴ *Id.* at para. 43, citing 47 C.F.R. Section 1.3.

⁵ *Id.* at para. 44.

implementation schedules, specifying the location solutions it considered and why they would not meet the Commission's requirements, and offering a revised implementation schedule.⁶ If the carrier considers and rejects a solution that is "available and feasible," according to the Commission, a waiver will not be granted.⁷

The Commission carefully reviewed each aspect of Voicestream's request in accordance with its Phase II waiver parameters. Voicestream provided a specific proposal with a path to full compliance, and demonstrated that "special circumstances" exist as it is one of the few U.S. carriers using a GSM-based technology.⁸ The record supports the Commission's decision, and it should not be reversed.

The fact that the Commission granted the waiver does not, as APCO suggests in its Petition, set a "dangerous precedent."⁹ APCO argues that the waiver establishes "an explicit alternative method and schedule for compliance with the wireless E911 requirements."¹⁰ That is not the case. Rule waivers are unique to the facts and circumstances of the party seeking relief. This is particularly true with respect to the Commission's Phase II requirements in light of the differing operating platforms carriers use, as well as the varying location

⁶ *Id.*

⁷ *Id.* at para. 45.

⁸ *Id.* at para. 56. The Commission recognized that at this time automatic location identification ("ALI") solutions for GSM-based wireless networks cannot be implemented in accordance with the accuracy and timing requirements set forth in the rule. *See also* para. 43, citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C.Cir. 1990), which cites to *WAIT Radio v. FCC*, 418 F. 2d 1153, 1159 (D.C.Cir. 1969).

⁹ APCO Petition at p. 4.

¹⁰ *Id.*

solutions they likely will implement. Thus, rather than establishing an “alternative” compliance schedule, the Voicestream waiver adopts a unique compliance schedule applicable to its underlying technology and location technology options.

The Commission has made clear that it will not grant a Phase II waiver to a carrier that has an “available and feasible” alternative for fully complying with the Phase II ALI requirement in accordance with the rule’s deadlines. The Commission has already found, based on the record in this proceeding, that Phase II solutions are available for some wireless network technologies consistent with the accuracy and implementation parameters of the rules.¹¹ It also recognized that this may not be the case for all technologies currently deployed in wireless networks in the United States and therefore established a process and substantive standards for granting rule waivers.¹²

The Commission has recognized, based on the extensive record developed herein, that there is no universally adaptable Phase II technology for the diverse wireless technologies in use in the United States and that it is in the public interest to consider, on a case-by-case basis, the merits of waiver requests by individual carriers, so long as any relief granted preserves a path to full compliance.¹³

¹¹ Fourth MO&O at para. 44.

¹² *Id.* at para. 45.

¹³ See Fourth MO&O at paras. 8-10.

Nothing in the reconsideration petition demonstrates that this conclusion is arbitrary or otherwise not supported by the record herein. On the contrary, regardless of the Commission's decision on the merits of Voicestream's specific waiver application, carriers always have the right under the Commission's rules to seek waiver of a regulatory requirement, for good cause shown.¹⁴

Thus, the petitioner's concerns that the waiver establishes an explicit alternative Phase II compliance schedule is incorrect. The Commission has properly concluded, based on the record herein, that it will consider, and where justified, grant carrier-specific waivers. Other carriers may justify different waiver relief and thereby follow a different method and path to achieving full Phase II compliance. The Voicestream waiver does not necessarily establish an explicit alternative compliance method; on the contrary, it represents the flexibility the Commission has recognized may be warranted in the intensely competitive, technologically diverse CMRS industry. Wireless carriers, in response to explicit Commission encouragement,¹⁵ have developed and deployed a variety of network technologies and air interfaces to bring mobile customers new and differentiated services at lower cost. The Fourth MO&O simply recognized

¹⁴ 47 C.F.R. Section 1.3.

¹⁵ See, e.g., Second Report and Order, 8 FCC Rcd 7700 (1993) at para. 23 (The Commission "continue[s] to believe that it is important that the PCS definition provide for operation of the widest possible range of [mobile and portable] communications.")

that "one size does not fit all" when it comes to Phase II solutions and provided a reasoned approach and substantive standards for evaluating individualized alternative compliance solutions.

Granting the petitioner's request for reconsideration at this time will *not* promote Phase II compliance. On the contrary, by adding further uncertainty to an already complex issue, it will sabotage the ability of carriers and manufacturers to rely on the Commission's actions and proceed to achieve Phase II compliance. Manufacturers cannot develop and bring Phase II solutions to market under constantly changing regulatory conditions.

III. CONCLUSION

For these reasons, Nextel respectfully submits that the Commission should dismiss APCO's Petition and uphold its decision to grant Voicestream's waiver request.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By,


Robert S. Foosaner
Senior Vice President – Government Affairs

Lawrence R. Krevor
Senior Director – Government Affairs

Laura L. Holloway
Director – Government Affairs

James B. Goldstein
Regulatory Counsel

Date: October 10, 2000

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 10th day of October, 2000,
caused a copy of the attached Opposition of Nextel Communications, Inc., to be
served by hand delivery or first-class mail, postage prepaid to the following:

E. Wendy Austrie
Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-B101
Washington, DC 20554

*Robert A. Calaff, Esq.
Corporate Counsel
Voicestream Wireless
1300 Pennsylvania Avenue, NW
Suite 700
Washington, DC 20004

*Robert M. Gurss
Shook, Hardy & Bacon, L.L.P.
600 14th Street, NW
Suite 800
Washington, DC 20005

A handwritten signature in black ink, reading "Rochelle L. Pearson", written over a horizontal line.

Rochelle L. Pearson

* Via First Class Mail